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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID AND NATASHA WIT, *et al.*,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH
(operating as OPTUMHEALTH
BEHAVIORAL SOLUTIONS),

Defendant.

Case No. 3:14-CV-02346-JCS
Action Filed: May 21, 2014

**PLAINTIFFS' RESPONSE TO DEFENDANT
UBH'S NOTICE OF RECENT AUTHORITY**

GARY ALEXANDER, *et al.*,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH
(operating as OPTUMHEALTH
BEHAVIORAL SOLUTIONS),

Defendant.

Case No. 3:14-CV-05337-JCS
Action Filed: December 4, 2014

1 The Local Rules allow a party to bring to the Court’s attention a “*relevant judicial*
 2 *opinion*” published after the close of briefing on a motion. *See* Local Civ. R. 7-3(d)(2)
 3 (emphasis added). The case UBH seeks to draw to the Court’s attention, however, is not
 4 remotely relevant to any issues presently before the Court. *See AA Suncoast Chiropractic Clinic,*
 5 *P.A. v. Progressive Am. Ins. Co.*, __ F.3d __, 2019 WL 4316088 (11th Cir. Sept. 12, 2019)
 6 (hereinafter “*Suncoast*”).

7 *Suncoast* involved class claims for personal injury damages owed pursuant to car
 8 insurance policies regulated under Florida law, not welfare benefit plans subject to the Employee
 9 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (“ERISA”). *Id.* at *1. For
 10 that reason, the Eleventh Circuit’s Rule 23 analysis did not consider the duties of an ERISA
 11 fiduciary, including the fiduciary duty to “discharge his duties . . . in accordance with the
 12 documents and instruments governing the plan,” 29 U.S.C. § 1104(a)(1)(D); the implications of
 13 ERISA’s carefully-crafted administrative-appeal regime; or the fact that ERISA’s default remedy
 14 when a benefit determination stems from a misinterpretation of an ERISA plan is remand to the
 15 administrator for a new decision under the correct interpretation. *See, e.g., Saffle v. Sierra Pac.*
 16 *Power Co. Barg. Unit Long Term Disab. Income Plan*, 85 F.3d 455, 461 (9th Cir. 1996) (remand
 17 for reprocessing is the default remedy “when an ERISA plan administrator, with discretion to
 18 apply a plan, has misconstrued the Plan and applied a wrong standard to a benefits
 19 determination”); *Levinson v. Reliance Standard Life Ins. Co.*, 245 F.3d 1321, 1330 (11th Cir.
 20 2001) (“[A]s a general rule, remand to the plan fiduciary is the appropriate remedy when the plan
 21 administrator has not had an opportunity to consider evidence on an issue.”).

22 Moreover, the Eleventh Circuit emphasized that the district court had rejected a Rule
 23 23(b)(3) class—a ruling the *Suncoast* plaintiffs chose not to appeal—and thus viewed the
 24 *Suncoast* plaintiffs’ request for injunctive relief as an improper attempt to re-style the claims to
 25 avoid the predominance and superiority requirements. *See Suncoast*, 2019 WL 4316088, at *3.
 26 Here, by contrast, the Court *granted* class certification under Rule 23(b)(3). In addition, while
 27 the Eleventh Circuit found the prospective injunctive relief requested by the *Suncoast* plaintiffs
 28 to be *de minimis* and a sham, *id.* at *5, here the forward-looking injunctive relief (prohibiting

1 UBH from using its overly-restrictive Guidelines and requiring UBH to use Guidelines that
2 comport with generally accepted standards of care) is an essential part of providing a complete
3 and meaningful remedy for the ERISA violations proven at trial.

4 Because the case UBH cites is entirely irrelevant, the Court should disregard UBH's
5 Notice of Supplemental Authority.

6
7 Dated: October 1, 2019

ZUCKERMAN SPAEDER LLP

8 /s/ Caroline E. Reynolds
9 Caroline E. Reynolds

10 PSYCH-APPEAL, INC.
Meiram Bendat

11 *Attorneys for Class Plaintiffs*
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